

adjudges them by their special names, as they stand in his author's charter, the first will be null against the co-creditors, but good against the debtor himself; as was found between the competing adjudgers of *Menzies of Enoch*, 21st July 1680, where the Lords found an adjudication of lands undesigned null. But Sir William Menzies's rights are as formal and special as our law requires, and will carry this backbond as fully as Doctor Brown's; and, being long prior, must be preferable.

Some of the Lords laid hold on the latency of the backbond. But it being ALLEGED, That Sir John had deponed and produced it in the process, where it had lain for a long time, they remitted this point to the Ordinary to be further heard. Yet, many inclined to think the general clause comprehended this backbond sufficiently, and were for preferring Sir William Menzies to the Doctor. Though some think the l. 80 *D. de Reg. Jur.* goes quite another way. *In toto jure generi per speciem derogatur, idque potissimum habetur quod in speciem directum est.* Vol. II. Page 602.

[See the subsequent part of Fountainhall's Report of this Case, Dictionary, page 187.]

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1710. December 9. The ROYAL BANK of SCOTLAND and the LORD ADVOCATE against ROBERT FLEMING and BARBARA STEIL.

A COMPLAINT was given in by Mr David Drummond, treasurer to the Royal Bank of Scotland, and Sir David Dalrymple, her Majesty's Advocate, against Robert Fleming, late schoolmaster at Stenhouse, and Barbara Steil, his wife, bearing, That, at Lanark fair and sundry other places, forged bank-notes of £12 Scots, had been dispersed and vented; and, after inquiry, they were discovered to have been first used by the said Robert Fleming: whereon he and his wife being apprehended, and put in Hamilton Tolbooth, and examined by the Sheriff-depute, in September last, they both, from an impression of their guilt, made an ingenuous confession, that he had, since Whitsunday last, counterfeited above twenty of these small bank-notes, and passed them in sundry places; and she had bought a plaid with one of them and that the necessity of his numerous family, and poverty, had first tempted him, besides his having a current hand of write, capable of imitating what lay before him; and that he had lead frames and stamps, for making the impress on the Bank-notes; and that, after several weeks' trial, he had arrived to that perfection, that he had wrote the whole body of the note, and put Mr Drummond's and James Cumming's names thereto. The Advocate having given an order to transmit him to Edinburgh prison; the Lords gave direction to bring them both before them to be examined, before they should meet with wicked persons who would advise them to retract and deny all. And this day, being sisted before the Lords, they were examined apart; but the first thing occurred to the Lords was, Whether their declarations emitted at Hamilton, before the Sheriff-depute of Clidsdale, must not be first cancelled, ere they could be interrogated on the foresaid crime: and, in regard it was capital, and improbation depending against them, the Lords thought they behoved to be at absolute freedom from any previous confession; which

was not probative in a criminal court: and so, their subscriptions being cancelled, they, on a reëxamination, went back from every thing they had said, pretending it was extorted from them by threats. But both of them denied it with such an air of guilt, that all were convinced of their villany; and the woman was so self-convicted, that to most of the questions she stood mute and dumb, obstinately refusing to answer, either in the affirmative or negative; which put the Queen's lawyers to recur to the indirect articles of falsehood, whereof their confessions, though cancelled, yet afforded a very strong presumption, as also the moulds and instruments found in his custody; which could admit of no other use: and that the wife tore sundry papers on her apprehension, and threw them in the fire. And it is very probable, if he had succeeded prosperously, and undiscovered, he would have proceeded to the forging other bank-notes of greater value.

The Lords, till farther discovery might be got, remanded them both to prison. And though some moved to make them close, it was remembered, that, by the Act 1701, anent wrongous imprisonment, they cannot be kept close, but advocates and others must have access to them: yet they ordained them to be put in separate rooms, and the goodman of the Tolbooth to have an eye who came to them, till such time as the Lords had opportunity to call them again, when more proofs may emerge against them. Being returned to prison, his conscience awakened on him for his prevarication, and could get no sleep all night, but desired to be brought before the Lords; which was done next day, where he made an ingenuous confession of his guilt, in forging the stamps and fabricating the bank-notes, and putting the accountant's and treasurer's subscriptions thereto, besides his writing the whole body of the bank-notes; which confession he judicially signed. And when the Lords shall come to advise it, and find the falsehood proven, that decret of improbation, upon their remitting the pannel to the criminal court, will be *probatio probata* of the crime to the assize, without any farther adminicle or proof. *Vol. II. Page 605.*

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1710. *December 12.* The EARL of CROMARTY and ROSS of BALNAGOWN  
*against* GRAY of WARRISTON.

FRASER of Beaufort being debtor to David Stewart, Commissary of Murray, in 616 merks; this bond is assigned to James Gray, merchant in Edinburgh, and he transfers it to young James, his son, who makes an assignation thereof in favours of the Earl of Cromarty; who craving payment of the debt from Beaufort, he produces a discharge of it from one Troup, a messenger, who had a factory and commission to uplift it from old James Gray, and had got the whole writs and progress delivered up to him by the said Troup. Cromarty, finding himself disappointed, pursues Robert Gray, now of Warriston, as representing his father and grandfather, who had contravened the warrandice, by assigning him to a debt whereof they had got payment.

ALLEGED,—The commission and factory produced, as granted by old James Gray, empowering Troup, the messenger, to uplift and discharge the money, is a null writ in law, having neither writer's name nor witnesses.

ANSWERED,—They offered to prove holograph.

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